

CITY of NOVI CITY COUNCIL

**Agenda Item F
October 24, 2011**

SUBJECT: Approval of a resolution affirming that streets proposed as private on an approved site plan are to remain private.

SUBMITTING DEPARTMENT: Department of Public Services, Engineering Division *BTC*

CITY MANAGER APPROVAL: *R24*

BACKGROUND INFORMATION: *[Signature]*

The City received a petition signed by a majority of the residents in the Briarwood of Novi Condominium requesting that the City establish a special assessment district to reconstruct the private streets within the condo and designate them as public streets, which is contrary to the approved site plan that called for the streets to remain private (see Coburn's August 31, 2011 memo). This request prompted City Council to refer the topic of private street acceptance to the Ordinance Review Committee for discussion.

The Ordinance Review Committee met on October 13, 2011 (minutes, attached) and recommended that a policy be considered by City Council explicitly stating that the City will not accept private streets or create a special assessment district for the reconstruction of private streets. The recommendation and rationale from the Ordinance Review Committee is documented in the attached resolution proposed for City Council consideration.

The Ordinance Review Committee further recommended that the City offer assistance and provide expertise to residents on private streets. Staff will continue to provide technical assistance to residents who live on private streets to help them understand the existing pavement conditions, options for rehabilitation, and appropriate standards for reconstruction.

RECOMMENDED ACTION: Approval of a resolution affirming that streets proposed as private on an approved site plan are to remain private.

	1	2	Y	N
Mayor Landry				
Mayor Pro Tem Gatt				
Council Member Fischer				
Council Member Margolis				

	1	2	Y	N
Council Member Mutch				
Council Member Staudt				
Council Member Wrobel				

CITY OF NOVI

COUNTY OF OAKLAND, MICHIGAN

RESOLUTION REGARDING ACCEPTANCE OF PRIVATE STREETS

Minutes of a Meeting of the City Council of the City of Novi, County of Oakland, Michigan, held in the City Hall of said City on _____, _____, at ____ o'clock P.M. Prevailing Eastern Time.

PRESENT: Councilmembers _____

ABSENT: Councilmembers _____

The following preamble and Resolution were offered by Councilmember _____ and supported by Councilmember _____.

WHEREAS ; Several developments within the City of Novi were designed, reviewed and approved by the City through the site plan process to include streets designated as private roads, in some cases to allow for higher density, reduced setbacks or other deviations from the City's standards, and

WHEREAS ; There are approximately 38 centerline miles of private streets within the City of Novi, and

WHEREAS ; The maintenance of private streets is the responsibility of the homeowners, condominium, or association for each development as stated in the recorded master deed for each development, and

WHEREAS ; The City of Novi has no responsibility for the maintenance of streets that were designated as private on the approved site plan, and

WHEREAS ; The City of Novi is under no obligation to accept streets that are designated as private on an approved site plan.

NOW THEREFORE, IT IS THEREFORE RESOLVED that it is the policy of the City of Novi that streets designated as private on an approved site plan will not be considered for acceptance by the City as public streets and that the City will not create a special assessment district for the reconstruction of private streets.

AYES:

NAYS:

RESOLUTION DECLARED ADOPTED.

Maryanne Cornelius, City Clerk

CERTIFICATION

I hereby certify that the foregoing is a true and complete copy of a resolution adopted by the City Council of the City of Novi, County of Oakland, and State of Michigan, at a regular meeting held this _____ day of _____, 2011, and that public notice of said meeting was given pursuant to and in full compliance with Act No. 267, Public Acts of Michigan, 1976, and that the minutes of said meeting have been kept and made available to the public as required by said Act.

Maryanne Cornelius, City Clerk
City of Novi

Ordinance Review Committee October 13, 2011 Meeting

Excerpt of Minutes

2. Policy regarding the acceptance of existing private residential streets

Mayor Landry wanted to verify that the reason the issue arose was because Briarwood of Novi Condominium had asked the City to create a Special Assessment District in order to pay for the reconstruction of their private streets. He added there were 38 miles of private streets that were built in the late 1990's and early 2000's with the knowledge they would have to maintain those streets. He said he didn't want to create a policy that allowed private streets to be reconstructed through a SAD.

Member Margolis said she brought it to Ordinance Review because the issue kept coming up. She said there was not a clear answer and it would continue to be an issue.

Mr. Schultz said the City does not have to maintain private roads through a SAD because it wouldn't qualify as a public improvement. He said the City has never done a SAD to fix private roads. He said there was a section in the Charter that said the City could do a SAD if it was a nuisance, but it is not.

Mayor Landry said they would have to fund it themselves by raising the money or getting a bank loan. He said they could do something similar to the City SAD process themselves.

Member Margolis said she felt it was beyond reasonable for the association to be able to get a loan and do it themselves. She wanted to find a way for the City to offer some type of assistance even if it wasn't doing a SAD. Mayor Landry said the issue was that the condominium association knew when they built that it was up to them to maintain the roads. Member Mutch agreed and said they should have been saving money from the very beginning because they knew they would have to maintain the road themselves.

Member Margolis said she was not in favor of doing a SAD or making the roads public for the City to maintain, but wanted to find a way to offer some type of assistance. Member Mutch asked if the City could perform the maintenance and then make them pay for it without making it a SAD or making the streets public. He thought that could be a solution because the association is actually willing to pay in this situation.

Mayor Landry said he didn't know what the City could offer as assistance and didn't want to take over the streets as public. Member Margolis said she didn't want to take over the streets either, but wanted to offer some type of help because they can't do it on their own.

Member Mutch said he agreed with the Mayor but was sympathetic with Briarwood of Novi Condominiums. He was hoping they could find a way to help them without doing something as drastic as a Charter Amendment.

Mayor Landry said they need to put a policy in place so there is a clear answer for when this arises in the future. Member Margolis asked if there was anything we could do to help them.

Mr. Cardenas said the policy could state that the City could advise and assist with expertise in the process.

It was recommended that a policy be created for presentation to City Council on October 24th that the City will not accept private streets or create a SAD for the reconstruction of private streets, but the City can offer assistance and provide expertise.



TO: ROB HAYES, P.E.; DIRECTOR OF
FROM: BRIAN COBURN, P.E.; ENGINEER
SUBJECT: BRIARWOOD REQUEST FOR PA
DATE: AUGUST 31, 2011

9/1/2011
To: Mayor and City Council members
For your consideration. If there is interest on the part of the City Council in bringing this forward for discussion, please let me know. As I understand, Briarwood has been saving and anticipating the needing reconstruction; they are looking at alternatives including this making streets public and a special assessment for initial turnover to City. There are approximately 38 miles of private streets that, like Briarwood streets, could be considered for public acceptance (this number excludes streets that are already earmarked to one day be accepted, or are in mobile home parks, apartment complexes, etc.). To put it into perspective, we currently maintain about 132 miles of public residential streets.
Clay

The enclosed *Informal Request for Information Petition* was signed by 48 of the 68 owners within the Briarwood of Novi Condominium (71%) requesting that the City reconstruct Edgewood Drive, Edgewood Court North, Enchanted Drive and Bramblewood Court. Although the streets were intended to be private, the property owners are requesting a special assessment to reconstruct the streets and for subsequent acceptance of the streets by the City. Briarwood of Novi is a single family detached condominium.

The informal petition is the first step in the City's special assessment process. The delivery of the petition containing the signatures of more than 30% of the property owners within the proposed district prompts Engineering staff to prepare a preliminary project cost estimate and host a public information meeting with the proposed district. The purpose of the informal process is to provide the property owners with cost estimates and other information necessary about the process before they are asked to sign a formal petition initiating the special assessment process and requiring expenditures on outside consultants. Following the public information meeting, the property owners would need to provide a formal petition to the City Clerk containing signatures of 51% or more of the property owners in the proposed district to start the special assessment process.

The special assessment process is outlined in Chapter 30 of the Novi Code of Ordinances. The process includes two public hearings and five resolutions to initiate the project. Section 11 of the City Charter provides the ability for the City to use special assessments to fund public improvements. Specifically Section 11-1 (attached) allows the use of special assessments on roads that have not been added to the public road system under Act 51.

This request is different from other street paving special assessment requests in that the streets to be improved under the special assessment process are not currently public streets. We are unaware of a precedent in which the City has allowed a special assessment on private roads. It is our understanding that a special assessment to reconstruct the roads would require them to become public. Though it appears that the SAD may be permissible, the correct process would need to be determined to ensure that the City has the requisite public interest in the improvements for compliance with the SAD provisions of the City Charter. This may require the property owners to grant public easements prior to initiation of the SAD. In the event that the City is interested in moving forward, a final determination of permissibility and the correct procedure would need to be determined.

The streets in Briarwood of Novi are not entirely built to the City's roadway standards and do not meet the following requirements:

- Right-of-way dedication width shall not be less than 60 feet in single family residential subdivision
- Curves must have a radius of not less than 230 feet
- Sidewalks are required on both sides of subdivision streets

The City has accepted several streets within private developments, many of which did not meet the City's road standards in some way. The most recent was Vista Hills in 2009, in which the residents paid the City \$190,000 for the improvement of the streets prior to acceptance. Vista Hills is similar to Briarwood in that there is a reduced setback, lack of a standard 60-foot wide right-of-way, and sidewalk on only one side of the road (Briarwood lacks a sidewalk on both sides). Briarwood is different than Vista Hills in that Vista Hills was part of the larger Sandstone development that did not fully build out as intended and was likely part of the consideration by the City in accepting the streets. The streets in Abbey Hills were proposed private, but later accepted by the City in 2006 and have reduced setbacks, narrow right-of-way, and non-standard radii. Briarwood is different from Vista Hills and Abbey Hills in that it lacks any sidewalks and there are more locations with radii that do not meet standards. Briarwood also lacks cul-de-sacs at the end of the streets, but uses a "T" turnaround as permitted in the ordinance.

The existing roads in Briarwood are in poor condition (PASER 3) and therefore the request for acceptance as part of a special assessment to reconstruct the roads makes the concept of street acceptance easier to consider. As with any street acceptance, there are additional long term maintenance costs to consider. The lack of cul-de-sacs within the development would make it more difficult for winter maintenance. There will be normal preventative and routine maintenance in the form of crack sealing, patching, joint maintenance and possibly concrete panel replacements.

Since this request is unique, we are seeking direction on how best to proceed. Because this request has no precedent with the City, one option would be to present this as a policy discussion at the City Council level. We would like some additional direction before authorizing additional staff time to develop a cost estimate, conduct a public meeting and receiving the formal petition that would initiate the formal SAD process.

Please let me know your thoughts on how best to proceed.

Briarwood of Novi Condo

Location Map



Map Author: Brian Coburn
 Date: 8/30/11
 Project:
 Version #: 1

MAP INTERPRETATION NOTICE

Map information depicted is not intended to replace or substitute for any official or primary source. This map was intended to meet National Map Accuracy Standards and use the most accurate sources available to the people of the City of Novi. Boundary measurements and area calculations are approximate and should not be construed as survey measurements performed by a licensed Michigan Surveyor as defined in Michigan Public Act 322 of 1970 as amended. Please contact the City GIS Manager to confirm source and accuracy information related to this map.

Map Legend

- Briarwood Condo Private Streets
- Briarwood of Novi Condo



City of Novi
 Engineering Division
 Department of Public Services
 26300 Delwal Drive
 Novi, MI 48375
cityofnovi.org



1 inch = 300 feet

Novi, Michigan, Code of Ordinances >> PART I - CHARTER >> **CHAPTER 11. - SPECIAL ASSESSMENTS** >>

CHAPTER 11. - SPECIAL ASSESSMENTS [1]

Section 11.1. - General power relative to special assessments.

Section 11.2. - Detailed procedure to be fixed by ordinance.

Section 11.3. - Lien for special assessments.

Section 11.4. - Contested assessments.

Section 11.1. - General power relative to special assessments.

The City Council shall, after public hearing, have power to determine and declare by resolution that the whole or any part of the expense of public improvement, repair or abatement of nuisance shall be defrayed by special assessments upon the property specially benefited.

- (a) Those roads, maintained by the City, which have heretofore been designated as Basic Arterial Inter-County Thoroughfares on Plate II of Part V of the 1967 Master Plan for the Village of Novi and adopted by the Village Council at a Special Meeting held September 25, 1967, shall be improved without specially assessing any costs thereof to the residential property adjacent thereto.
- (b) Those paved roads which have been accepted and are maintained by the City, and have been reported to and approved by the Michigan Department of State Highways and Transportation for the purposes of Act 51 of the Public Acts of 1951 [MCL 247.651 et seq., MSA 9.1097(1) et seq.] as amended, shall be maintained, repaired and improved without specially assessing any costs thereof to the residential property adjacent thereto.

State law reference— Permissible that Charter provide for assessing costs of public improvements, MCL 117.4d, MSA 5.2077.

Section 11.2. - Detailed procedure to be fixed by ordinance.

The complete special-assessment procedure to be used, including the preparing of plans and specifications, estimated costs, preparation, hearings, requirements for mailing and publishing of notices of hearing and correction of the special assessment roll, collection of special assessments, assessment of single lots or parcels and any other matters concerning the making of improvements, repairs or abatement of nuisance by the special assessment method, shall be provided by ordinance. The ordinance shall authorize additional assessments if the prior assessment proves insufficient to pay for the improvement in whole or in part or is determined to be invalid and shall also provide for the refund of excessive assessments. If the excess is less than five percent (5%) of the total cost, it may be placed in the general fund of the City.

Section 11.3. - Lien for special assessments.

From the date of confirmation of any roll levying any special assessment, the City shall possess a lien on the premises subject thereto, for the full amount of the unpaid special assessment and the interest on all unpaid installments thereof; and such amount shall also be a debt of the person to whom assessed until paid and, in case of delinquency, may be enforced as delinquent City property taxes or by a suit against such person.

Section 11.4. - Contested assessments.

No action of any kind shall be instituted for the purpose of contesting or enjoining the collection of any special assessment, unless (a) within thirty (30) days after the confirmation of the special assessment roll, written notice is given to the City Council indicating an intention to file such action and stating the grounds on which it is claimed such assessment is illegal; and unless (b) such action shall be commenced within sixty (60) days after the confirmation of the roll. If the City Attorney submits a written opinion finding said roll illegal, in whole or in part, the City Council shall revoke its confirmation, correct the illegality, if possible, and reconfirm

the same. Property which is not involved in the illegality shall not be assessed more than was imposed upon the original confirmation without further notice and hearing thereon.

FOOTNOTE(S):

⁽⁷⁾ **State Law reference**— *Power re assessments, MCL 117.4a, 117.4b, 117.4d, 117.5; MSA 5.2074, 5.2075, 5.2077, 5.2084. [\(Back\)](#)*



**INFORMAL
REQUEST FOR INFORMATION PETITION**

**PRIOR TO INITIATION OF A
SPECIAL ASSESSMENT DISTRICT**

We, the undersigned, being owners of property located on the following streets:

Edgewood, Enchanted + Bramblewood Ct

request that the City of Novi Engineering Division prepare a preliminary cost estimate, prepare a preliminary design and conduct an informal public information meeting to discuss the design, costs and process prior to the initiation of a Special Assessment District to construct the following improvement in our area: (example: water main along X Street between A Street and B Street, etc.)

Reconstruction of concrete roads

We understand that there is no obligation to initiate a special assessment district by signing this petition and that the initiation of a special assessment district will not begin until a formal petition is submitted to the City Clerk following the public information meeting. We further understand that the costs and design to be provided will be preliminary in nature and may change.

	Signature of Owners	Sidwell Number	Address	Date Signed
1	William M. M... ..		47325 CIDER MILL DR	8/11/11
2	...		47321 BRAMBLEWOOD CT	8/11/11
3	...		47348 CIDER MILL	8/11/11
4	Thomas C. B...		24549 EDGEWOOD DR	8/11/11
5	Helga Radnick		24537 Edgewood	8/11/11
6	Richard B...		24525 EDGEWOOD	8/11/11
7	John J. Hamlin		24560 Edgewood Ct S	8/11/11
8	Theresa Jean Jordan		24581 Enchanted Drive	8/11/11
9	Patrick J. Mitchell		47336 Cider Mill DR	8/11/11
10	Patrick Nerg...		24610 Edgewood	8/11/11
11	Lamine Thorell		24600 Edgewood	8-11-11
12	Barb Kasperczyk		24555 Edgewood	8-11-11
13	Rosanne Laabs		24561 Edgewood	8-11-11
14	B Kelly		24569 Edgewood DR	8/11/11
15	Donald C. Harris		24573 Edgewood	8-11-11
16	FRED RICHTER		24597 Edgewood	8-11-11
17	Mike Lawrence		24625 Edgewood CT N	8-11-2011
18	Roger J. Spudis		24647 Edgewood Ct N	8.11.11
19	Irene Wintermyer		24653 Edgewood Ct N	8-11-11
20	...		24665 Edgewood Ct N	8-11-11
21	...		47360 CIDER MILL DR	8-11-11



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	Signature of Owners	Sidwell Number	Address	Date Signed
1	Robert F. Egg		47318 CIDER MILL DR	8/11/11
2	Edward Budde		47314 CIDER MILL DR	8/11/11
3	Sandra Radu		47300 Cider Mill	8-11-11
4	Betty Hardy		47360 Cider Mill	8-11-11
5	Frank S. Papp		24609 EDGEMOOD DR	8/12/11
6	Lonell Joch		24605 ENCHANTED DR	8/12/11
7	Algie Bathe		24594 ENCHANTED DR	8-12-11
8	Donald Collins		24593 ENCHANTED DR	8-12-11
9	Jusan Basanti		24582 Enchanted Dr	8-12-11
10	Laura Broderick		24576 Enchanted	8-12-11
11	SM Janette		24548 Edgewood CTS	8/12/11
12	Bertha Denard		47353 Cider Mill	8/12/11
13	Anni Foyth		47294 Edgewood	8/12/11
14	P. Steinhoff		24618 Enchanted	8/12/11
15	Margaret D. Papp		24588 Enchanted Dr.	8/12/11
16	Steve & Bill Foyth		24659 Edgewood Ct. N.	8-13-11
17	A. G. Hester		47386 Cider Mill Dr	8/13/11
18	Sue Duvalle		47389 BRAMBLESWOOD DR	8/13/11
19	Jo Ann Albate		47295 Brambleswood Ct	8-13-11
20	Charles Daughan		47302 " "	8-13-11
21	Darryl Vornauer		24576 Enchanted Dr	8-13-11



cityofnovi.org

INFORMAL REQUEST FOR INFORMATION PETITION

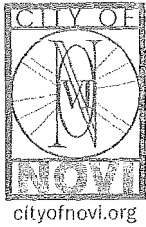
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	Signature of Owners	Sidwell Number	Address	Date Signed
1	Pat Haberman		47359 Cidermill	8-13-11
2	Francis R. Plettman		24606 ENCHANTED DR	8-15-11
3	Gregory Bergerson		24602 ENCHANTED DR	8-18-11
4	Sam J. Ferraro		24617 ENCHANTED DR	8-18-11
5	Don (d) My		24623 ENCHANTED DR	8-18-11
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	Signature of Owners	Sidwell Number	Address	Date Signed
1	<i>Jeanne Kelly</i>		47296 BRAMBLEWOOD CT	8-15-11
2	<i>Bob Smith</i>		47290 Bramblewood Ct	8-15-11
3	<i>Edo D...</i>		24615 EDGEWOOD	8-26-11
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